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NOV 27 1964
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1964

No. [redacted] 6

AL HARRIS,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY MEMORANDUM FOR PETITIONER

Moses Polakoff
Counsel for Petitioner
475 Fifth Avenue
New York, N. Y. 10017

Daniel H. Greenberg
Of Counsel

32 Case Press Inc., 421 Hudson St., N.Y.—ORegon 5-4540

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No. 526

AL HARRIS,

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—v.—

UNITED STATES OF AMERICA,

Respondent.

REPLY MEMORANDUM FOR PETITIONER

Statement

This memorandum is respectfully submitted in reply to the Memorandum for the United States submitted in this cause. In its memorandum the United States states that it acquiesces in the grant of the petition herein on the issue of a court's power summarily to impose punishment for contempt beyond that permitted for petty offenses. For the reasons set forth hereinafter, we believe that the grant of the petition for a writ of certiorari herein should not be so limited, but rather should be on all the issues raised in the petition.

Discussion

In the petition for a writ of certiorari, four questions were presented for consideration by the Court. (See page

2 of the petition.) In its memorandum the Government recast these questions as two questions. (See page 2, Memorandum for the United States.) In so doing the Government attempted to narrow the issues which the Court should consider, and has asked this Court not to consider the merits of petitioner's entire case. Without attempting to restate the reasons set forth for granting the writ on all issues, we believe that a hearing on the merits of the entire case is warranted by the questions presented by petitioner.

I.

With respect to the applicability of the immunity provisions of the Federal Communications Act (47 U.S.C. 409 (*l*)), to the investigation being conducted into alleged violations of 18 U.S.C. 1952, this Court has not heretofore considered this question on the merits. The expanding use of the contempt power through the application of various immunity provisions in regulatory commission enactments to non-related criminal investigations would make it appropriate for this issue to be considered by the Court. Moreover, in stating the issues involved in this case, petitioner must necessarily set forth the underlying factual basis and legal contentions advanced by him for his invocation of his constitutional privilege against self-incrimination and for his refusal to answer questions before the grand jury. A proper presentation of this issue appears to be necessary for a proper consideration of the case.

II.

In its statement of the questions presented the Government has framed as the second question the issue of whether "the district court could proceed under Rule 42(a),

F.R. Crim. P., to try petitioner for contempt and sentence him to imprisonment for one year." Petitioner contends that he was not afforded a proper and fair hearing for criminal contempt under Rule 42(a), F.R. Crim. P., by the invocation of the summary contempt procedures and in the conduct of said hearing before the district court. Petitioner further submits that this Court's decision in *Brown* v. *United States*, 359 U.S. 41, should be reconsidered and overruled. When the issues of fact of this proceeding are considered in terms of the type of hearing afforded him, petitioner believes that the entire concept of summary contempt procedures should again be reviewed by this Court. This is especially so in light of the issues now raised as to the imposition of severe sentence in contempt cases. Although the question of whether petitioner had a fair hearing, under summary contempt procedures, is really part of the question presented in the Government's version of this issue, and as to which it acquiesces in the grant of the petition, yet its discussion of this question is in terms only of the propriety of the sentence imposed. Accordingly, we believe that the question of whether petitioner was afforded a proper and fair hearing, and by the use of summary contempt procedures should be heard.

III.

Although this Court held in *United States* v. *Barnett*, 376 U.S. 681, that trial by jury is not constitutionally required in cases of criminal contempt, nevertheless the various opinions written in said case appear to hold that where a sentence imposed is in excess of that authorized for petty offenses, trial by jury would seem to be required in light of the sentence imposed. See *District of Columbia* v.

Clawans, 300 U.S. 617. Accordingly, the issue of trial by jury in contempt cases should again be considered, since it is part of the essential issue presented for consideration in this case.

CONCLUSION

The grant of the petition for a writ of certiorari should be on all of the questions presented by petitioner, and this case should be set for full argument before the Court.

Respectfully submitted,

MOSES POLAKOFF
Counsel for Petitioner

DANIEL H. GREENBERG
Of Counsel